November 16, 2021

Michael Shapiro
Deputy Assistant Secretary for Economic Policy
Office of the Secretary
United States Department of Transportation
1200 New Jersey Avenue, S.E.
West Building, 12th Floor
Washington, D.C. 20590

Re: America's Supply Chains and the Transportation Industrial Base, United States Department of Transportation, Office of the Secretary, 86 *Fed. Reg.* 51719 (Sept. 16, 2021); Docket No. DOT-OST-2021-0106.

Filed via www.regulations.gov

Dear Mr. Shapiro:

The National Fisheries Institute ("NFI") offers these comments in response to the above-captioned OST Notice. NFI appreciates the opportunity to provide this response.[1]

NFI is the nation's largest commercial seafood trade association, representing the entire seafood value chain, from harvesters, vessel owners, exporters, and importers, to processors, distributors, retailers, and seafood restaurants. Collectively, these companies supply American families and consumers around the world with tens of millions of premium, sustainable seafood meals every year, utilizing a resource that is the principal protein for about three billion people.

Seafood is the most globally traded "center of the plate" protein. The United States is both a major seafood importer and one of the world's largest seafood *exporters*, in some years shipping well over half its landed catch to overseas customers. American seafood companies involved in exporting or importing fish – as most of them are – often rely on lengthy, complex supply chains that have taken decades to develop, refine, and make profitable. Because domestic U.S. seafood production and processing occurs from remote Alaska communities to south Florida and in many states in between, even wholly *domestic* seafood products can require

[1] NFI appreciates the opportunity to submit this late-filed document.

supply chains stretching thousands of miles, requiring multimodal shipping, and involving cross-border movements. Individual seafood supply chains often use oceangoing freight, freight rail, and trucking services for a given product, and as a result rely on efficient intermodal operations in order to meet customer commitments and preserve competitiveness in the relevant foreign or domestic market.[2] ***Supply chain efficiency and reliability could not be more important for NFI member companies.***

Unfortunately, supply chain disruptions and added costs are disrupting the sector, hampering its recovery from the COVID-19 pandemic and associated economic lockdowns.[3] U.S. seafood companies now regularly experience:

- *Exponential* increases in demurrage and other port-related costs;
- Unpredictable dwell times;
- Shortages of containers, chassis, and labor at ports, rail yards, container depots and delivery locations;
- A paucity of cold storage capacity;
- Intermodal transfer and other inland challenges;
- Dramatically higher tariff/contract rates for oceangoing freight; and
- Commercial practices by oceangoing carriers and NVOCCs that exacerbate – even where they do not cause – these difficulties.

The entire supply chain but in particular the middle faces huge cost increases. NFI member companies are being hammered with transportation cost increases of as much as *1,000 percent* over prior years. Seafood companies report that delays associated with clearing major U.S. POEs now cause the companies to miss delivery windows to customers. Such delays themselves carry an additional financial burden. These problems cause increased costs that seafood suppliers cannot fully absorb. Absent immediate actions to address the overall problem, consumers will experience significantly higher prices for the seafood they serve to their families.

Delays and costs of this magnitude make it more difficult for processors and distributors to maintain and expand their U.S. payrolls. Because, according to the Department of Commerce, over 40 percent of the sector's direct domestic employment is attributable to an imported product, snarls in the international seafood supply chain threaten *U.S.* jobs. Because, as noted, domestic seafood harvesters often export over 50 percent of the value of the annual landed catch,

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[2] Seafood producers, especially U.S. exporters of high-end restaurant items, also rely on efficient scheduled and charter air freight services.

[3] Within days in mid-March 2020, U.S. restaurant demand collapsed almost entirely. Because restaurants and other food service outlets historically accounted for nearly 70 percent of domestic consumption, this collapse disproportionately harmed seafood suppliers.

the container shortage and other problems at U.S. ports threaten the nation's seafood exporters and *their* American workers.[4] If left unaddressed, these challenges will do lasting damage to the sector and the 1.25 million U.S. workers it employs.

With respect to solutions, although long-term improvements to port, highway, rail, and aviation systems are welcome, they cannot substitute for near-term administrative and operational steps addressing the immediate problems. NFI offers these examples of potentially beneficial near- and medium-term steps at U.S. ports:

1. *Expand gate hours*. Gate hours should be expanded wherever possible. This is to be distinguished from expanded *port* hours, which when done in isolation can *worsen* shipper costs rather than reduce them. (See below for additional discussion on the harm that expanded port hours can do to shippers.)

2. *Expand free time for vessels*. Expanded "free time" should be mandated for each vessel when arriving at the pier in order to minimize the amount of demurrage fees facing affected supply chain stakeholders. This step alone could save shippers significant costs, help reduce increased consumers costs, and reduce the inflationary pressures that now threaten the nation's economic recovery.

3. *Develop a national freight portal*. The nation lacks standardized data and transparency among industry stakeholders. An enhanced, centralized information center would help build communication and ensure proper planning, so cargo can move efficiently from the moment a vessel arrives at port until it exits the terminal.

4. *Improve appointment systems*. Many current appointment systems for stakeholders are poorly designed. A single and consistent appointment system with a common set of rules to allow for seamless communication between and among stakeholders would offer immediate benefits. The current system is characterized by ineffective and antiquated technology and information sharing systems, an absence of standardized data, and poor transparency among and between stakeholders. Updating these systems would allow for better planning and timely returns of equipment.

5. *Address workforce shortages*. Even with a modernized and improved supply chain infrastructure, the system will continue to falter if there are not enough workers to keep products moving efficiently. The worker shortage problem must be addressed immediately by providing tools to the industry to recruit, train, and protect their workers.

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[4] The container shortage and other problems affecting exporters come at a time in which U.S. seafood exports have fallen to their lowest levels in a decade.

In addition, the Department should consider how certain supposed reforms will *not* work to address the snarls that now characterize the U.S. supply chain and in fact will exacerbate those problems, harming the very shippers and consumers these measures are intended to aid. Although they pertain principally to the Ports of Los Angeles and Long Beach, other major U.S. ports may replicate them (and perhaps already have). First, over the last two months, the Ports of Los Angeles and Long Beach each decided to operate 24 hours a day, across all terminals. The Port of Long Beach did so in September, followed by the Port of Los Angeles in October.

This change will affirmatively harm NFI member companies trying to move containers through the system. Why? Continuous stevedoring operations facilitate efficient offloading of containers. In isolation, this is all to the good. However, in certain circumstances offloaded containers will sit for days at the terminal, because of an absence of trucks and because cold storage facilities are closed overnight and on weekends. But in the meantime, the clock will start to run on shippers' free days. Perversely, then, this will force shippers to incur demurrage charges they otherwise *would not have incurred* had the container remained on the vessel until the rest of the system is also open. And in the end, the cargo will not move more quickly to customers than it would have were the expanded hours of operation not in effect. The attached graphic illustrates the problem.

Second, the Ports of Los Angeles and Long Beach plan to fine ocean carriers $100 for each import container that is scheduled to move by truck but is not moved for nine or more days, or is scheduled to move by rail and is not moved for six or more days. An additional $100 per container fine is imposed each day until the container in question leaves the terminal. Here, too, this change is advertised as a step towards improved throughput and ultimately elimination of vessel backlogs. Ocean carriers, however, have already indicated they will pass through these fines to shippers.[5] An efficiency measure of this nature does no good if it simply raises the costs for the stakeholders least able to affect goods movement – the shippers. Rather than addressing the causes of the current delays, this fine will simply be added to the other increased costs.[6]

Note the unhealthy interplay between these two measures: A shipper is more likely to incur this fine because the expanded port hours make it more likely that a given container will be offloaded at the terminal earlier than would otherwise have been the case. That in turn triggers the clock running on the six- or nine-day period, thus placing pressure *on the shipper* to move the container, regardless of lack of an appointment, a truck driver, a chassis, or an open cold storage facility.

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[5] According to a leading ocean freight publication, "'[within] minutes of the announcement by the twin ports, container lines began sending letters to importers alerting them to be prepared for the new charges.'" Kulisch, Eric, *Ocean carriers will pass on fines to importers for lingering containers*, Freight Waves (Oct. 27, 2021) (quoting Matt Schrap, CEO of the Harbor Trucking Association) (https://www.freightwaves.com/news/shippers-fear-catastrophic-fallout-from-crazy-california-port-fees).

[6] A large coalition of importers, exporters, and transportation and logistics providers has made clear its opposition to the excessive container dwell fine, and on November 15 asked the Federal Maritime Commission to review the propriety of this approach. A copy of the letter this coalition submitted to the FMC is attached.

These two examples demonstrate the importance of understanding completely the consequences of supply chain reforms intended to ameliorate the current situation. NFI urges the Department to consider carefully steps like these prior to implementation. Without effective, concrete steps to address the current delays, shippers will continue to experience severe delays and massive cost increases, in a macroeconomic environment poorly equipped to handle either. Ultimately, consumers will pay in the form of increased prices for the everyday seafood items they want and need.[7]

NFI appreciates the opportunity to share these views on behalf its hundreds of supply chain participants across the nation.

Respectfully submitted,

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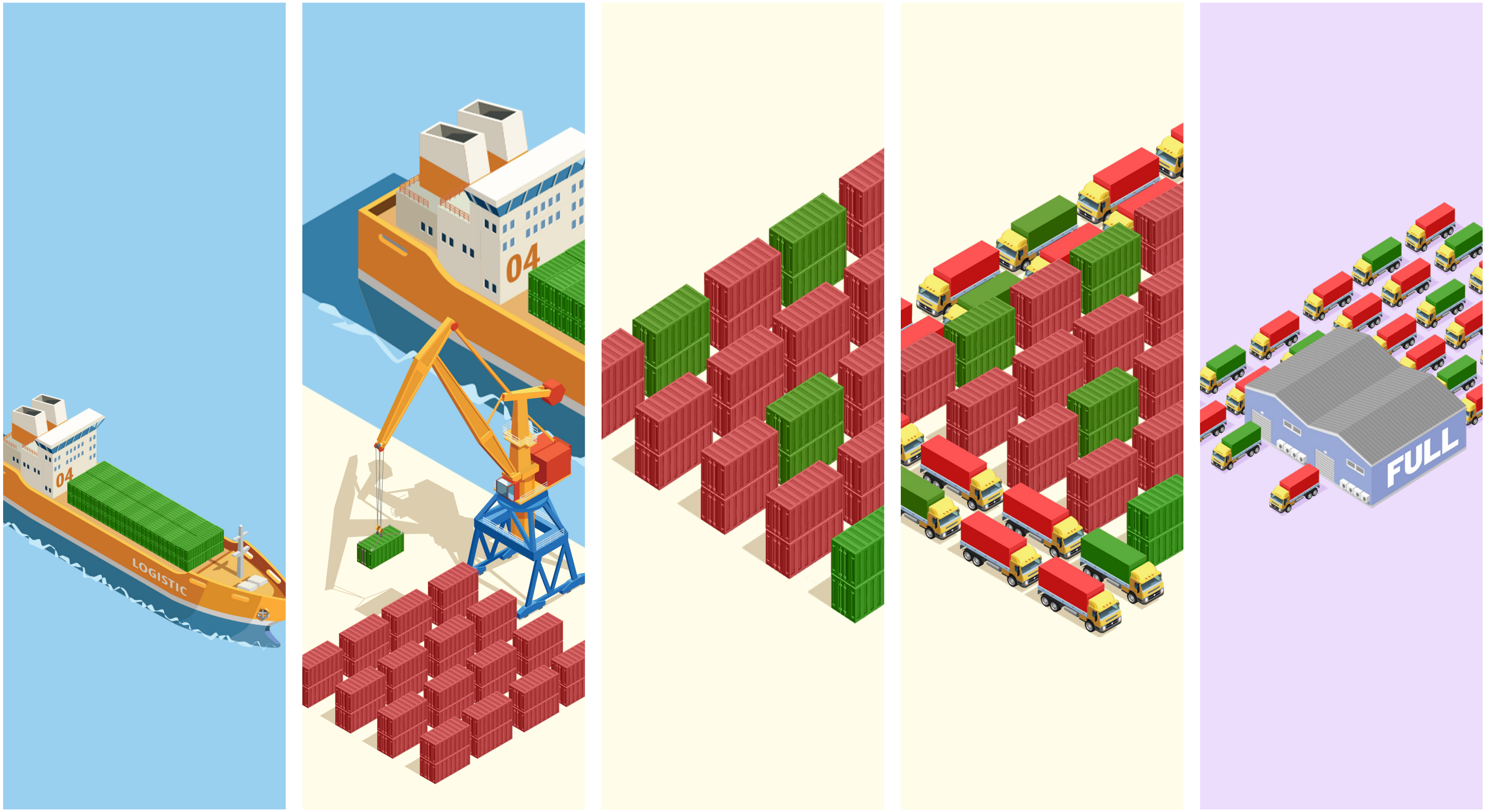
Robert DeHaan
Vice President for Government Relations

Attachments

cc: The Hon. Gina Raimondo
The Hon. Polly Trottenberg
The Hon. John Porcari
The Hon. Daniel B. Maffei
The Hon. Rebecca F. Dye
The Hon. Michael A. Khouri
The Hon. Louis E. Sola
The Hon. Carl W. Bentzel

[7] Although there are of course exceptions, in general seafood items shipped via oceangoing freight serve middle- and working-class families, with species moving via air freight serving higher-end outlets. Raising the costs of affordable, widely accessible seafood products in effect deters those families from enjoying the seafood that the Dietary Guidelines for Americans recommends Americans eat more frequently.

While opening the ports 24 hours will allow ships to offload containers because of the shortage of truckers and warehouse space containers are not likely to move to retailers and restaurants anytime soon.



Ships entering port where they receive a docking number.

Port is now open 24 hours. The offloaded containers stay on the pier until picked up by a drayage company.

There is a high demand for drayage companies leaving certain product stranded at the ports.

Product is stuck due to lack of availability in warehouse storage.

November 15, 2021

The Honorable Dan Maffei
Chairman
U.S. Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573

RE: Container Excess Dwell Fees

Dear Chairman Maffei:

On behalf of the undersigned associations representing importers, exporters and supply chain stakeholders, we are writing to you to express concern about the new Container Excess Dwell Fees that have been established at the Ports of Los Angeles and Long Beach. While the ports and terminals have indicated that the fee is to be paid by the carrier for loaded containers that have excessive dwell time beyond the allotted periods for truck or rail movements, the carriers have indicated that they will pass along the new fee to cargo owners.

Collectively, we have heard concerns from our members about both the establishment of these fees as well as the pass throughs announced by the carriers. We certainly recognize the unprecedented disruption and port congestion that our nation is facing. We applaud efforts to get stakeholders together to develop creative solutions to improve fluidity and move containers as quickly as possible from the port. However, with the ongoing challenges that many cargo owners and drayage trucking companies are experiencing with the ability to retrieve cargo because of port congestion, restrictive empty return policies, and subsequent chassis shortages that result, we believe the new fee will add substantial costs to the supply chain.

We are especially concerned about the announcements by the carriers that they intend to pass the charges through to the cargo owners. We support the letter filed recently by NITL, which asked the Commission how is the purpose of the Container Excess Dwell Fee any different than the current demurrage fees paid by importers and wouldn't the pass through of this fee allow for a "double dip" by the carriers? We agree with NITL that a pass-through of the Container Excess Dwell fee is subject to the FMC's Interpretive Rule on unjust and unreasonable demurrage and detention practices. 46 CFR § 545.5. Under this rule, in order to be reasonable, the fee must serve its "intended primary purposes as financial incentives to promote freight fluidity." 46 C.F.R. § 545.5(1). If the fee cannot serve this purpose, it would unfairly penalize the importer and function as an improper revenue stream.

We strongly encourage the FMC to review the new fees and to clarify that the announced carrier pass throughs would be subject to the FMC's demurrage rule. With the ongoing disruption issues, which many expect to continue well into next year, and the skyrocketing transportation costs that importers and exporters are facing, the FMC needs to ensure that these new fee proposals meet their stated goal and comply with regulations under the FMC's authority.

Thank you very much for your consideration.

Sincerely,

1. Accessories Council
2. Air-Conditioning, Heating, and Refrigeration Institute
3. Airforwarders Association
4. ALTI (Audio and Loudspeaker Technologies International)
5. American Apparel & Footwear Association
6. American Association of Exporters and Importers
7. American Bridal and Prom Industry Association
8. American Coatings Association
9. American Down and Feather Council
10. American Forest & Paper Association
11. American Home Furnishings Alliance
12. American Import Shippers Association
13. American Lighting Association
14. American Log Export Coalition
15. American Pyrotechnics Association
16. American Rental Association
17. American Spice Trade Association
18. American Trucking Associations
19. Association of Bi-State Motor Carriers
20. Association of Food Industries
21. Association of Home Appliance Manufacturers
22. Auto Care Association
23. Automotive Body Parts Association
24. Autos Drive America
25. Business Alliance for Customs Modernization
26. California Fashion Association
27. California Trucking Association
28. Can Manufacturers Institute
29. CAWA- Representing the Automotive Parts Industry
30. Color Pigments Manufacturers Association
31. Consumer Technology Association
32. Council of Fashion Designers of America (CFDA)
33. Fashion Accessories Shippers Association
34. Foreign Trade Association
35. Gemini Shippers Association
36. Green Coffee Association, Inc.
37. Halloween & Costume Association
38. Harbor Trucking Association
39. Hardwood Federation
40. Home Fashion Products Association
41. Institute of Scrap Recycling Industries, Inc.
42. Intermodal Motor Carriers Conference

43. International Association of Movers (IAM)
44. International Housewares Association
45. International Warehouse Logistics Association
46. Juvenile Products Manufacturers Association (JPMA)
47. Leather and Hide Council of America
48. Los Angeles Customs Broker and Freight Forwarder Association
49. Meat Import Council of America
50. Motor and Equipment Manufacturers Association (MEMA)
51. Motorcycle Industry Council
52. NAFEM
53. National Association of Chemical Distributors
54. National Association of Music Merchants
55. National Association of Printing Ink Manufacturer's
56. National Customs Brokers and Forwarders Association of America
57. National Electrical Manufacturers Association
58. National Fisheries Institute
59. National Industrial Transportation League
60. National Pork Producers Council
61. National Retail Federation
62. National Shippers Strategic Transportation Council (NASSTRAC)
63. National Ski & Snowboard Retailers Association
64. National Sporting Goods Association (NSGA)
65. New Jersey Motor Truck Association
66. North American Home Furnishings Association
67. North American Meat Institute
68. North American Uniform Manufacturers & Distributors
69. Outdoor Industry Association
70. Pet Industry Joint Advisory Council (PIJAC)
71. Plumbing Manufacturers International
72. Promotional Products Association International (PPAI)
73. Recreational Off-Highway Vehicle Association
74. Retail Industry Leaders Association (RILA)
75. Snowsports Industries America
76. Society of Chemical Manufacturers & Affiliates
77. Specialty Equipment Market Association
78. Specialty Vehicle Institute of America
79. Sports & Fitness Industry Association
80. Tea Association of the U.S.A., Inc.
81. The Fashion Jewelry and Accessories Trade Association
82. The Toy Association
83. Travel Goods Association
84. U.S. Fashion Industry Association
85. Vinyl Institute

CC: Commissioner Rebecca Dye
Commissioner Carl Bentzel

Commissioner Michael Khouri
Commissioner Louis Sola